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Are you being prosecuted by Inland Revenue?

Inland Revenue will prosecute for such offences as:

- Failing to file GST and income tax returns on time;
- Failing to file PAYE returns and failing to account for PAYE;
- Tax evasion; and
- Fraud ie for filing false returns.

Tax Crimes are treated seriously by the Courts

Some people believe that tax crime is a victimless crime and is therefore less serious than any other criminal offending. The Courts have strongly denounced that view. The Courts view is that the victim of tax crime is Inland Revenue and the community more generally. When sentencing a person for a tax crime the Court will adopt the principles of the Sentencing Act 2002 so that the convicted person is held accountable for what they have done and a sense of responsibility, denunciation and deterrence of such offending is promoted.

Like all criminal offending tax offences vary in their seriousness. The most serious tax crimes can lead to prosecution under the Crimes Act 1961 for fraud. There are also numerous offences created by the Tax Administration Act 1994 (TAA). In these difficult financial times a common example of a tax crime is when a person knowingly fails to file either their own tax return or when a person aids and abets a company (or other entity) to knowingly fail to file income tax returns when required, with the intention of evading the assessment or payment of tax. Under s143B(1)(b) of the TAA upon conviction for such an offence the maximum penalty that can be imposed is five years imprisonment, a fine not exceeding \$50,000.00, or both.

How does a tax prosecution start?

IRD will decide on the charges to be brought against a person. If you are facing the possibility of being prosecuted then it is imperative that you obtain legal advice immediately from a tax specialist. Sometimes it is advantageous if the charges to be brought are discussed with the department before hand.

IRD will "lay" an "Information" in the District Court. The Information is a form in which the CIR is named as the Informant. The Information will state that the CIR has reason to suspect that an offence has been committed by the person named on the Information (the named defendant) and brief details of the offence will be set out. This should be sufficient detail on the Information so the defendant and the Court understand the nature of the offence. The form will also state the Court, and the date and the time of the first hearing. The information will then be served on the defendant.

What you should do if you receive a letter from Inland Revenue advising that the department is considering your case for prosecution?

Get good legal advice early. Do not wait until you receive the information summoning you to Court. Graeme Withers of Graeme Withers Law is a highly experienced tax lawyer who can assist you when you face a tax prosecution and with all tax matters. **Contact Graeme** for prompt, professional legal advice.

What do I do if I have been served with an Information from Inland Revenue?

Again, get good legal advice immediately. **Talk to Graeme.**

This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.